

### **REMARKS**

Applicants appreciate the Final Office Action of August 5, 2004. In particular, Applicants appreciate the Examiners indication that Claims 12-20 and Claims 30-38 are allowed. Applicants have provided a new Abstract and request that the objections with respect to the Abstract be withdrawn. Applicants have canceled Claims 1 –11 from the present application and, therefore, submit that the rejections with respect to these claims have been obviated. Applicants submit that Claims 21-29 are in compliance with 35 U.S.C. § 101 for at least the reasons discussed herein.

#### **In the Specification**

The Abstract stands objected to for referring to "purported merits or speculative applications of the invention and compares the invention to the prior art." Final Office Action, page 3, paragraph 7. Applicants have replaced the abstract as set out above and, therefore, request that the objections with respect to the abstract be withdrawn.

#### **The Claim Rejections**

Claims 1-11 and Claims 21-29 stand rejected under 35 U.S.C. § 101 because "the claimed invention is directed to non-statutory subject matter." Final Office Action, page 3, paragraph 9. Applicants have canceled claims 1-11 from the present application and, therefore, submit that the rejections with respect to these claims have been obviated.

With respect to Claims 21-29, the Final Office Action states "because the claims are means plus function, the claimed invention is considered software per se in light of the specification (page 20, lines 17-20)." Final Office Action, page 3, paragraph 10. Applicants respectfully disagree.

As a preliminary note, Applicants submit that Claims 21-29 are not properly rejected under 35 U.S.C. § 101. The subject matter of Claims 21-29 is clearly statutory. Furthermore, Claims 21-29 are clearly in compliance with 35 U.S.C. § 112 for at least the reasons discussed below.

35 U.S.C. §112, paragraph 6 states:

An element in a claim for a combination **may be expressed as a means or step for** performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. §112, paragraph 6 (emphasis added). Furthermore, as stated in the M.P.E.P.:

A means plus function limitation is distinctly claimed if the description makes it clear that means correspond to well-defined structure of a computer or computer component implemented in either hardware or software and its associated hardware platform.

M.P.E.P. § 2106 (V)(A)(2). As stated in the specification of the present invention:

Software programming code which embodies the present invention is typically accessed by the **microprocessor 212** (for example, of the **workstation 210, server 243, gateway 246, and/or server 247**) from long term storage media 230 of some type, such as a CD-ROM drive or hard drive. The software programming code may be embodied on any of a variety of known media for use with a data processing system, such as a diskette, hard drive or CD-ROM. The code may be distributed on such media, or may be distributed from the memory or storage of one computer system over a network of some type to other computer systems for use by such other systems. Alternatively, the programming code may be embodied in **the memory 228, and accessed by the microprocessor 212 using the bus 214.**

Specification, page 19, lines 8-16 (emphasis added). Thus, the description of the present invention set out above makes it clear that the means correspond to the microprocessor 212 of one or more computing devices (workstation 210, server 243, gateway 246, and/or server 247).

Furthermore, it clear from the specification of the present invention when read as a whole that the present invention can be implemented by computer program instructions. These computer program instructions may be provided to a processor, for example, microprocessor 212, **to produce a machine**, such that the instructions, which execute via the processor, create means for implementing the functions/acts specified in the block or blocks of the flowcharts. The computer program instructions may also be stored in a computer-readable memory that can direct a computer to function in a particular manner, such that the instructions stored in the computer-readable memory produce **an article of manufacture** including instruction means which implement the function/act specified in the block or blocks of the flowcharts. The computer program instructions may also be loaded onto a computer to cause a series of

operational steps to be performed on the computer or other programmable apparatus to produce a computer implemented process such that the instructions which execute on the computer or other programmable apparatus provide steps for implementing the functions/acts specified in the block or blocks of the flowcharts. Thus, the recitations of Claim 21-29 are not only in compliance with 35 U.S.C. § 101, they are in compliance with 35 U.S.C. § 112. Accordingly, Applicants respectfully request withdrawal of the 101 rejection with respect to Claims 21-29, as this rejection is improper.

### CONCLUSION

Applicants respectfully submit that pending claims are in condition for allowance for at least the reasons discussed above. Thus, allowance of the pending claims is respectfully requested in due course. Favorable examination and allowance of the present application is respectfully requested. It is not believed that any extension of time is required for this paper. However, in the event that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to our Deposit Account No. 09-0461.

Respectfully submitted,



Elizabeth A. Stanek  
Registration No. 48,568

**USPTO Customer No. 46589**  
Myers Bigel Sibley & Sajovec, P.A.  
Post Office Box 37428  
Raleigh, North Carolina 27627  
Telephone: 919/854-1400  
Facsimile: 919/854-1401